

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT CASWELL	:	
Petitioner,	:	
	:	CIVIL ACTION NO. 3:05-316
vs.	:	
	:	(JUDGE NEALON)
	:	
THE DISTRICT ATTORNEY OF THE	:	(MAGISTRATE JUDGE SMYSER)
COUNTY OF LACKAWANNA, THE	:	
ATTORNEY GENERAL OF THE	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, and JAMES	:	
WYDNER	:	
Respondents	:	

ORDER

BACKGROUND

The Petitioner, Robert Caswell, an inmate at the State Correctional Institute at Dallas ("SCI-Dallas"), filed the instant petition pursuant to 28 U.S.C. § 2254 on February 14, 2005. (Doc.1). The petition challenges the denial of parole by the Pennsylvania Board of Probation and Parole (the "Board").

On May 23, 2005, United States Magistrate Judge J. Andrew Smyser issued a Report and Recommendation on this matter. (Doc. 12). Magistrate Judge Smyser recommended that the petition be denied, finding that: (1) the Board did not violate the *Ex Post Facto* Clause by denying parole; (2) the Board's denial of parole was based on permissible criteria; (3) the Board's vote requirements for denial of parole did not violate the *Ex Post Facto* Clause; (4) the petitioner's claim

regarding violation of presumptive state law ranges is not cognizable as a federal habeas claim; and (5) the petitioner's claim regarding failure to follow Pennsylvania Sentencing Guidelines is not cognizable as a federal habeas claim. No objections were filed to the Magistrate Judge's Report and Recommendation. After careful review and in the exercise of sound judicial discretion, the Court adopts the Magistrate Judge's Report and Recommendation.

ACCORDINGLY, THIS 23rd DAY OF JUNE, 2005, IT IS HEREBY ORDERED
THAT:

1. The Magistrate Judge's Report and Recommendation (Doc. 12) is adopted;
2. Plaintiff's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc.1) is denied;
3. The Clerk of Court is directed to close this case; and
4. The court concludes that there is no basis for the issuance of a Certificate of Appealability

s/ William J. Nealon
United States District Judge